

Thu Aug 21 10:34:11 EDT 2014
Yuhas.Darlene@epamail.epa.gov
FW: WaterLegacy Support for EPA Exercise of Clean Water Act Authority Regarding Gogebic Taconite Proposal
To: CMS.OEX@epamail.epa.gov; Gaines.Cynthia@epamail.epa.gov

For cms. thank you

From: Paula Maccabee [mailto:pmaccabee@justchangelaw.com]
Sent: Wednesday, August 20, 2014 2:24 PM
To: McCarthy, Gina; Hedman, Susan
Cc: brtchair@badriver-nsn.gov; CommDir@badriver-nsn.gov
Subject: WaterLegacy Support for EPA Exercise of Clean Water Act Authority Regarding Gogebic Taconite Proposal

Dear Administrator McCarthy and Dr. Hedman:

WaterLegacy is a non-profit organization founded to protect Minnesota water resources and the communities that rely on them. We are concerned about mining proposals in the Lake Superior Basin that may affect regional ecological, human health and tribal concerns as well as set precedent for Minnesota projects.

Attached with this email, please find our letter in support of efforts by the Six Bands of the Anishinaabeg Territory Watersheds and Waters of Lake Superior to engage the United States Environmental Protection Agency early in a process to protect water resources that would be impaired were the potential Gogebic Taconite (GTAC) mine to be approved in the Bad River Watershed.

Particularly in a state which seems to be indifferent to protecting water quality and tribal resources, WaterLegacy believes it is imperative that the EPA fulfill its obligations under the Clean Water Act and its fiduciary duties and obligations to prevent environmental injustice as an agent of the United States government.

Please feel free to contact me if you have any questions regarding WaterLegacy's letter or our concerns.

Sincerely yours,

Paula Maccabee, Esq.

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August 20, 2014

SENT BY ELECTRONIC MAIL

Gina McCarthy (McCarthy.Gina@EPA.gov)

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Susan Hedman (Hedman.Susan@EPA.gov)

U.S. Environmental Protection Agency, Region 5

Ralph Metcalfe Federal Building

77 West Jackson Blvd.

Chicago, IL 60604

RE: Gogebic Taconite Mine and Lake Superior Basin Mining Impacts

Dear Administrator McCarthy and Dr. Hedman:

WaterLegacy is a Minnesota non-profit organization founded to protect Minnesota water resources and the communities that rely on them. We are concerned that mining proposals in neighboring states may affect ecological, human health and tribal concerns throughout the Lake Superior Basin as well as setting precedent for Minnesota projects.

We write this letter in support of efforts by the Six Bands of the Anishinaabeg Territory Watersheds and Waters of Lake Superior: Bad River Band of Lake Superior; Red Cliff Band of Lake Superior; Lac du Flambeau Band; St. Croix Band; Sokaogon Band; and Lac Courte Oreilles Band to engage the United States Environmental Protection Agency (EPA) early in a process to protect water resources that would be impaired were the potential Gogebic Taconite (GTAC) mine to be approved in the Bad River Watershed.

We understand that, since 2011, GTAC has proposed to build what could become the largest open-pit iron-ore mine in the world (4 1/2 miles long and up 1,000 feet deep) to extract taconite, a type of low-grade iron ore, from sulfide-bearing rock. They have yet to seek a permit for this project.

We also understand that this huge proposed taconite mine could affect drinking water for the cities of Ashland, Mellen, Highbridge, Marengo, Odanah and Upson. GTAC pollution could impact reservation waters of the Bad River Band, which has secured treatment as a state for the purpose of water quality standards, and would affect water quality in Ceded Territories where usufructuary rights have been reserved. Aquatic resources that could be impacted by the proposed mine include extensive wild rice waters on which the Bands depend, headwater trout streams, and wetlands known to be of national and international importance.

We believe that the EPA has obligations under the Clean Water Act, including Sections 404(c)

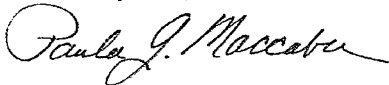
and 401(a)(2), and under applicable EPA regulations, to safeguard aquatic resources of national and international importance, to protect drinking water quality, fisheries, wildlife and recreational uses, and to ensure that any action subject to federal permits or to pollution discharge permits approved by the EPA complies with the water quality standards not only of affected States, but of affected Tribes that have secured treatment as a state under applicable regulations. In addition, the EPA has a fiduciary obligation to protect tribal resources and ecological resources that support usufructuary rights in Ceded Territories. The EPA, further, has an obligation under executive order as well as its own environmental justice policies, to ensure that actions, such as the proposed GTAC project, do not result in disparate adverse environmental impacts on tribal communities. Finally, each of the EPA's obligations – under the Clean Water Act, as a fiduciary agent of the United States Government and under the duty to prevent environmental injustice – must consider both the nature of the resources affected and the cumulative impacts on the watershed and the affected Anishinaabeg communities.

For these reasons, WaterLegacy believes it is appropriate for the EPA to analyze the nature of environmental conditions and threats from the GTAC mine even prior to the permitting process. This consideration should include analysis of potential effects on aquatic resources of national and international importance and the ability of a proposed taconite mine in sulfur-bearing rock to comply with the requirements of Section 404(c) and also to conform to the water quality requirements of affected Tribes with treatment as states. Tribal rights and resources and federal fiduciary obligations should also be included in this analysis.

We further believe that the concerns raised by the Six Bands of the Anishinaabeg Territory Watersheds and Waters of Lake Superior are broadly applicable throughout the Lake Superior Basin. As WaterLegacy and 58 other non-governmental organizations, faith-based groups, and businesses requested in December 2013, the EPA should without delay perform a rigorous assessment of the cumulative effects of mining throughout the Lake Superior Basin. This analysis and careful and early scrutiny of specific proposals affecting important aquatic resources, would serve the environmental, social, health and economic needs of the region, as well as protecting critical tribal rights and resources threatened by the GTAC mine proposal.

We respectfully request, particularly where a state seems indifferent to water quality within its jurisdiction, that the EPA exercise its authority as a regulator and a fiduciary, to protect clean waters and the ecological and human communities that rely on them.

Sincerely,



Paula Goodman Maccabee
WaterLegacy Advocacy Director/Counsel

cc: Mike Wiggins, Jr., Bad River Tribal Chairman (brtchair@badriver-nsn.gov)
Mark Rolo, Bad River Legal Department (c/o CommDir@badriver-nsn.gov)